

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7777 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 - 2 = Yes

3 - 5 = No.

PRABODHBHAI C. DAVE

Versus

STATE OF GUJARAT

Appearance:

MR MANISH R BHATT for Petitioner

Mr. U.A. Trivedi, AGP, for Respondent No. 1

MR SN SHELAT, learned Additional Advocate General
for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 10/12/98

ORAL JUDGEMENT (Per: Panchal, J.)

1. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction declaring that the acquisition proceedings initiated in respect of the disputed lands i.e. land bearing Survey No.879, admeasuring 2 hectares 58 Ares, and 0.5 sq.meters, as well as the land bearing Survey No.897, admeasuring 1 hectare 79 Ares and 56 sq.mtrs, situated within the revenue limits of village Samalpati, Taluka Patan, District Mehsana, have lapsed, as the Special Land Acquisition Officer and Deputy Collector, Patan, failed to make award under Section 11 of the Land Acquisition Act, 1894, ('the Act' for short) within the period of two years from the date of publication of the declaration made Section 6 of the Act. The petitioner has also prayed to declare that the award made by the Special Land Acquisition Officer and Deputy Collector, Patan, on September 21, 1990 with regard to land bearing Survey No.879 is illegal, improper and unjust. The petitioner has further prayed to issue a writ of mandamus or a writ of prohibition or any other appropriate writ, order or direction restraining the respondents, their agents and servants from making award with regard to the land bearing Survey No.897. The petitioner has further urged to issue a writ of mandamus or any other appropriate writ or order directing the respondents, their agents and servants to return possession of the land bearing Survey No.879, admeasuring 2 hectares 58 Ares, and 0.5 sq.meters, as well as the land bearing Survey No.897, admeasuring 1 hectare 79 Ares and 56 sq.mtrs situated within the revenue limits of village Samalpati, Taluka Patan, District Mehsana to the petitioner.

2. The petitioner asserts that he is the owner of the land bearing Survey No.879, admeasuring 2 hectares 58 Ares, and 0.5 sq.meters as well as the land bearing Survey No.897, admeasuring 1 hectare 79 Ares and 56 sq.mtrs situated within the revenue limits of village Samalpati, Taluka Patan, District Mehsana. On proposal being made, the State Government was satisfied that the lands belonging to the petitioner and others situated at village Samalpati, Taluka Patan, District Mehsana, were likely to be needed for public purpose of North Gujarat University Campus, Patan. Accordingly, notification under Section 4 of the Land Acquisition Act, 1894 ('Act' for short), was issued, which was published in the Government Gazette on April 22, 1987. The land owners were served with notices under Section 4 of the Act. They had filed their objections against the proposed acquisition. After considering objections, which were

raised by the land owners, the Special Land Acquisition Officer and Deputy Collector, Patan, had submitted his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the report submitted by the Special Land Acquisition Officer, the State Government was satisfied that the lands mentioned in the notification which was issued under Section 4(1) of the Act were needed for the public purpose of North Gujarat University Campus. Accordingly, declaration under Section 6 of the Act was made which was published in the official gazette on May 12, 1988. The said declaration was also published in the daily, "Gujarat Samachar", dated May 23, 1988. By the said notification the State Government had also invoked urgency clause under Section 17(1) of the Act directing the Collector to take possession of all the lands specified in Government Notification dated April 22, 1988 on expiration of fifteen days from the publication of the notice relating to the said lands under sub-section (i) of Section 9 of the Act. Copies of declaration made under Section 6 and notification issued under Section 17(1) of the Act are produced by the petitioner collectively at Annexure "A" to the petition. Interested persons were thereafter served with notices under Section 9 of the Act for the purpose of determination of compensation. Meanwhile, Special Civil Application No.2774 of 1988 was filed in the High Court by Patel Virchandbhai Madabhai and 39 others challenging the acquisition proceedings. The petition was placed for admission hearing before the Division Bench on June 3, 1988 and the Division Bench had passed the following order:-

"Notice pending admission and as to interim relief returnable on 20.6.1988. In the meanwhile by way of ad-interim injunction the respondents are restrained from taking possession of the land of the petitioners till June 22, 1988. Direct service."

The present petitioner had not filed any petition challenging acquisition proceedings and handed over possession of two survey numbers belonging to him on June 24, 1988. Special Civil Application No.2774 of 1998 filed by Mr. V.M. Patel and others again came up for hearing before the Division Bench comprising A.P. Ravani, J. (as he then was) and K.R. Vyas, J. on September 9, 1993. The learned counsel for the respondents raised objection to the maintainability of the joint petition by 40 individuals. Having regard to the facts of the case, the Division Bench passed the following order on September 9, 1993.

"The learned counsel for the respondents have objected to the maintainability of the petition on the ground that joint petition filed by forty individual land holders is not maintainable. The challenge to the legality and validity of the acquisition proceedings on various grounds will be required to be examined from the standpoint of each individual land holder. It may be that qua particular individual certain grounds may be upheld by the Court and qua certain other individuals the grounds advanced may not be upheld by the Court. In such an eventuality, it would not be possible even for the Court to pass a final effective order. Moreover, it is submitted that it will be difficult for the respondents to meet with the case of all the petitioners effectively in a joint petition. In our opinion, there is much substance in the objection raised on behalf of the respondents. Learned counsel for the petitioners state that the petitioners are inclined to file separate petition, however, the petitioners may be granted time for filing separate petition and for making request for withdrawing this petition. Time granted. The petitioners are directed to file separate petition latest by October 3, 1993. At that time the question with regard to disposing of this petition will be considered. Interim relief granted earlier is ordered to continue till October 5, 1993."

In view of the abovereferred to directions requiring the petitioners of Special Civil Application No.2774 of 1988, to file separate petitions, Special Civil Applications Nos. 12629 of 1993 and others were filed in the Court. Special Civil Application No.12629 of 1993 and other cognate matters were heard by Division Bench comprising A.P. Ravani, J. (as he then was) and N.N. Mathur, J. on August 10, 1994. The Division Bench, by judgment and order dated August 10, 1994, dismissed all the petitions but continued the interim relief upto October 10, 1994 to enable the petitioners to approach the higher forum. Thereupon, Special Leave Petition (C) Nos. 19097/94 with Special Leave Petitions (C) Nos. 19200/94 and 19080/94 were instituted before the Supreme Court. The Special Leave petitions were dismissed by the Supreme Court by an order dated November 21, 1994. Meanwhile, an award was made by the Special Land Acquisition Officer and Deputy Collector, Patan, under Section 11 of the Act with reference to land bearing Survey No.879 on September 21, 1990 and with reference to land bearing Survey No.897 on May 30, 1992. The petitioner has averred that the Special Land Acquisition Officer and Deputy Collector, Patan, did not make award within the period of two years from the date of publication of declaration under Section

6 of the Act and therefore acquisition proceedings have lapsed. The petitioner claims that he addressed a letter dated June 23, 1998 to the Special Land Acquisition Officer and Deputy Collector, Patan, asking him to hand over possession of two survey numbers to him. The said letter is produced by the petitioner at Annexure "C" to the petitioner. The petitioner was not handed over possession of the lands by the Special Land Acquisition Officer and Deputy Collector, Patan. The petitioner has, therefore, filed the present petition and claimed reliefs to which reference is made earlier.

3. Mr. S.S. Vora, Registrar, North Gujarat University, has filed affidavit in reply on behalf of respondent No.3 controverting the averments made in the petition. In the reply, it is stated that the petitioner has only 1/63 rd share approximately in the land bearing Survey No.879/2, whereas there are other co-sharers so far as the land bearing Survey No.879/1 is concerned and, therefore, the petition should not be entertained. It is averred that one Virchand Patel had challenged the acquisition proceedings in Special Civil Application No.4314 of 1990 and while dismissing the said petition the Division Bench of this Court held that there was a stay of action or proceedings contemplated by Explanation to Section 11A of the Act as a result of which the present petition should be dismissed. It is further claimed in the reply that a sum of Rs.61,932/- was deposited for acquisition of land bearing Survey No.879 by the North Gujarat University on June 19,1988 which is payable to the claimants whose interests were acquired and the final award declared on September 21, 1990, cannot be treated as having been made after the period of two years from the date of making of declaration under Section 6 of the Act. By filing the reply, the deponent of the affidavit in reply has demanded dismissal of the petition.

4. The petitioner has filed affidavit in rejoinder reiterating what is stated by him in the petition. In the rejoinder, it is claimed that the assertion made on behalf of respondent No.3 that the petitioner has meagre interest in the disputed lands is not correct. The petitioner has also filed further rejoinder mentioning in detail as to how he has major share and interest in the lands concerned. However, for the purpose of deciding the present petition, it is not necessary to refer to the contents of rejoinders in detail and, therefore, we have not made detailed reference to those rejoinders.

5. Mr. P.R. Patel, Deputy Collector, Prant Office,

Patan, has filed reply affidavit and stated that, in view of the interim relief granted by the High Court in Special Civil Application No.2774 of 1988, the awards, which were made on September 21,1990 and May 30, 1992, cannot be treated as having been made after a period of two years from the date of publication of declaration under Section 6 of the Act. It is further mentioned by Mr. Patel in his reply affidavit that, in view of the orders passed by the Court in Special Civil Application Nos.12629 of 1993 and other cognate matters, there is no substance in the contention that the awards were made after period of two years from the date of publication of declaration under Section 6 of the Act and the petition should be dismissed.

6. The petitioner has filed affidavit in rejoinder to the affidavit in reply filed by Mr.P.R. Patel and asserted that as the awards were made after period of two years from the date of publication of declaration under Section 6 of the Act, the reliefs claimed in the petition should be granted.

7. Mr. M.R. Bhatt, learned counsel for the petitioner, submitted that the petitioner had voluntarily surrendered possession of lands bearing Survey Nos.879 and 897 to the Competent Authority on June 24, 1988, whereas the Special Land Acquisition Officer and Deputy Collector had made award on September 21, 1990 with reference to land bearing Survey No.879 and another award on May 30, 1992 with reference to land bearing Survey No.897, and, as the awards were made after a period of two years from the date of publication of declaration under Section 6 of the Act, the acquisition proceedings should be treated as having lapsed. It was stressed that the petitioner had not initiated any proceedings with reference to action to be taken pursuant to declaration made under Section 6 of the Act and, therefore, the awards made on September 21,1990 and May 30, 1992 should be treated as made beyond the period prescribed by Section 11A of the Act. What was asserted was that, in other petitions, stay against dispossession and not stay against making of the award was granted by the Court and, therefore, while computing the period of two years referred to in Section 11A of the Act, the period during which the stay against dispossession was in force should not be excluded. It was also emphasized that the principle propounded by the Supreme Court in the case of Abhey Ram (Dead) by LRS. and others vs. Union of India and others, reported in (1997) 5 Supreme Court Cases 421, to the effect that stay obtained by some of the claimants prohibiting the authorities from publication of

declaration under Section 6 of the Act would be applicable to others also who had not obtained stay in that behalf, should not be made applicable to the facts of the case, because, the Supreme Court was concerned with interpretation of Sections 5A(2) and 6 of the Act and not with Section 11A of the Act. It was also urged that, in absence of any averments made by the Special Land Acquisition Officer and Deputy Collector, Patan, in his reply affidavit to the effect that he was morally restrained from making awards with reference to the disputed lands, as stay was obtained by some of the claimants prohibiting the authorities from taking possession of their lands it should be held that the acquisition proceedings have lapsed. It was vehemently pleaded by the learned counsel for the petitioner that though in other matters, there was stay order or injunction against dispossession which was operative from the year 1988 to 1994, no stay or injunction was obtained by the petitioner against any of the respondents as a result the awards were made by the respondent No.2 in the year 1990 and 1992 i.e. much prior to vacation of the stay and, therefore, Explanation to Section 11A of the Act would not be applicable to the facts of the case.

8. Mr. S.N. Shelat, learned Additional Advocate General appearing for the respondents asserted that the urgency clause contemplated by Section 17(1) of the Act was invoked by the State Government vide notification dated May 12, 1988 directing the Collector to take possession of the lands specified in the Government Notification dated April 22, 1987 on expiration of 15 days from the publication of the notices relating to the said lands under sub-section (i) of Section 9 of the Act, and possession of the lands belonging to the petitioner was taken on June 24, 1988 as a result of which the lands stood vested in the State Government and, therefore, Section 11A of the Act would not apply to the facts of the case. The learned counsel for the State Government submitted that the stay was obtained by some of the claimants and, therefore, the Special Land Acquisition Officer would have been justified in not making award till the stay was vacated, and as such the awards made on September 21, 1990 and May 30, 1992 cannot be treated as made after a period of two years from the date of publication of declaration under Section 6 of the Act. The learned counsel for the respondents highlighted that the stay granted by the Court was vacated when the Special Leave Petitions were dismissed by the Supreme Court on November 21, 1994 and, therefore, the awards made on September 21, 1990 and May 30, 1992 cannot be treated as made after period of two years from the date

of publication of declaration under Section 6 of the Act, so as to entitle the petitioner to claim the reliefs mentioned in the petition. In support of his submissions, the learned counsel for the respondents placed reliance on (i) Abhey Ram (Dead) by LRS. and others vs. Union of India and others, reported in (1997) 5 Supreme Court Cases 421; (ii) L.N. Venkatesan vs. State of Tamilnadu, reported in AIR 1997 Supreme Court 2426. (iii) Municipal Corporation of Delhi vs. Lichho Devi and others, reported in AIR 1997 Supreme Court 3474. (iv) Venkataswamappa vs. Special Deputy Commissioner (Revenue), reported in AIR 1997 Supreme Court 503; (v) Yusufbhai Noormohmed Nendoliya vs. State of Gujarat, reported in (1991) 4 Supreme Court Cases 531. (vi) Awadh Bihari Yadav vs. State of Bihar, reported in AIR 1996 Supreme Court 122. (vii) U.P. Jal Nigam, Lucknow through its Chairman and another vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, reported in AIR 1996 Supreme Court 1170. (viii) Allahabad Development Authority vs. Nasiruzzaman and others, reported in (1996) 6 Supreme Court Cases 424; (ix) Satendra Prasad Jain and others vs. State of U.P. and others; reported in (1993) 4 Supreme Court Cases 369.

9. We have heard learned counsel appearing for the parties at length.

10. As possession of the lands was taken pursuant to invocation of urgency clause under Section 17(1) of the Act in the present case, the first question which arises for consideration is whether the provisions of Section 11A of the Act would be applicable to the facts of the present case. Annexure "A" to the petition would indicate that the State Government had issued notification under Section 17(1) of the Act directing the Collector to take possession of all the lands specified in Government Notification dated April 22, 1987. It means that a direction was given to the Collector to take possession before making of the award. Pursuant to this notification, possession of the lands bearing Survey Nos. 897 and 879 belonging to the petitioner was taken on June 24, 1988. Before answering the question posed for consideration, it would be necessary to refer to provisions of Sections 6, 11, 11A, 16 and 17(1) of the Act as well as the scheme contemplated by those provisions. The relevant provisions are as under:

"6. Declaration that land is required for a public purpose.-

(1) Subject to the provisions of Part VII of this

Act, when the appropriate Government is satisfied, after considering the report, if any, made under section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its order and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (1),-

Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1),-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification; or

(kk) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification.

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation I- In computing any of the periods referred to in the first proviso, the period during which any action or proceedings to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2- Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenue.

(2) Every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the

declaration), and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be, and, after making such declaration, the appropriate Government may acquire the land in manner hereinafter appearing.

11(1) Enquiry and award by Collector.- On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections if any which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and to the value of the land at the date of publication of the notification under section 4, sub-section (1), and into the respective interest of the persons claiming the compensation and shall make an award under his hand of -

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorised in this behalf.

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

(2) Notwithstanding anything contained in sub-section (1), if at any state of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Registration Act, 1908, no agreement made under sub-section (2) shall be liable to registration under that Act.

11A. Period within which an award shall be made.- The Collector shall make an award under section 11 within a period of two years from the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

16. Power to take possession.- When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

17. Special powers in cases of urgency.-

(1) In case of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9 sub-section (1), take possession of any land needed for public purpose. Such land shall thereupon vest absolutely in the Government free from all encumbrances."

The Scheme contemplated by the abovereferred to provisions is that after declaration under section 6 of the Act is published, the Collector has to serve notice to the interested persons and after determining compensation, he has to make an award as envisaged by section 11 of the Act. After the award is made the Collector has authority to take possession of the land and once possession is taken, the land vests absolutely in the Government free from all encumbrances. Under section 16, three important expressions namely "taken possession", "vest absolutely" and "free from encumbrances" have been used. The very next moment after the property is actually taken possession of, it becomes vested in the Government and even if the ex-owner

thereafter enters upon the property and resumes possession, such an act on his part does not have the effect of obliterating the consequences of vesting. Under section 16, possession can be taken only after an award has been made under section 11, but under section 17(1) of the Act, possession can be taken on the expiry of 15 days from the date of publication of the notice mentioned in section 9(1), although no award has been made. Ordinarily, possession of any land notified for acquisition is taken when the Collector has made an award under section 11 and not before it. But an exception is provided under section 17(1). In cases of urgency, if the Government so directs, the Collector may, though no award has been made under section 11, on the expiration of the 15 days from the publication of the notice mentioned in section 9(1) take possession of the land and the land shall thereupon vest absolutely with the Government free from all encumbrances. In the case of *The Fruit and Vegetable Merchants Union vs. The Delhi Improvement Trust*, AIR 1957 Supreme Court 344, the word 'vest' is interpreted and it is held that in the cases contemplated by sections 16 and 17, the property acquired becomes the property of the Government without any conditions or limitations as to title or possession. It means that irrespective of the fact that the award is not made within a period of two years from the date of publication of declaration under section 6 of the Act, the property would absolutely vest in the Government if possession of the land is taken either under Section 16 or Section 17 and the fact that the award is not made within two years would not have the effect of obliterating the consequences of vesting nor would affect the validity of notification under section 4(1) or declaration under Section 6 of the Act. In *Lt. Governor of Himachal Pradesh and another vs. Sri Avinosh Sharma*, AIR 1970 Supreme Court 1576, the Supreme Court has ruled that after possession has been taken pursuant to a notification under section 17(1), the land is vested in the Government and the notification cannot be cancelled under section 21 of the General Clauses Act nor can the notification be withdrawn in exercise of powers of the Land Acquisition Act under section 48. What is emphasized therein is that when the possession of the land is taken under section 17(1), the land vests in the Government and there is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification. However, this point is no more res-integra and stands answered against the petitioner by catena of decisions of the Supreme Court. The Supreme Court has interpreted the provisions of Sections 11A, 17(1) and 48 of the Act in

the case of Awadh Bihari Yadav (supra), and held that, once the Government has taken possession of the land in question under Section 17(1) of the Act, Section 11A of the Act is not attracted and acquisition proceedings would not lapse even if no award was made within the period prescribed by Section 11A of the Act. While propounding the abovereferred to principle, the Supreme Court relied on its earlier decision rendered in the case of Satendra Prasad Jain and others vs. State of U.P. and others; reported in (1993) 4 Supreme Court Cases 369, wherein, it is held as under:

"Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession, the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending, and by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisition under Section 17, because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

Again, in the case of U.P. Jal Nigam (supra), the Supreme Court considered the effect of taking possession of land under Section 17(2) of the Act before declaration under Section 6 of the Act was made. It is ruled therein that once possession is taken under Section 17(2) of the Act, the land stands vested in the Government and unless notification withdrawing acquisition is passed the acquisition would not lapse even if the award is not passed within the period prescribed in Section 11A of the Act. In the case of Allahabad Development Authority (supra), the Supreme Court has held that Section 11A of

the Act does not apply to the cases of acquisition under Section 17 where possession is already taken and the lands stand vested in the State. What is highlighted therein is that, if urgency clause contemplated by section 17 of the Act is invoked, notification under Section 4(1) of the Act and declaration under Section 6 of the Act would not lapse due to failure to make award within two years from the date of declaration. Having regard to the principles enunciated by the Supreme Court in the abovereferred to decisions, we are of the opinion that Section 11A would not apply to the facts of the present case as after handing over of the possession, the lands stood vested in the Government free from all encumbrances. Once the lands stand vested in the State free from all encumbrances, there is no question of divesting the land and revesting the land in the erstwhile owner. The only right the erstwhile owner has is as to the determination of the compensation in accordance with the provisions of the Act. After the vesting has taken place, the question of lapse of notification under section 4(1) and the declaration under section 6 would not arise. The whole basis of the present petition is that notification under Section 4(1) and declaration under Section 6 of the Act should be treated as having lapsed because the Special Land Acquisition Officer and Deputy Collector, Patan, did not make award within two years from the date of publication of declaration made under Section 6 of the Act. As we have held that Section 11A does not apply to the facts of the present case, notification under Section 4(1) and declaration under Section 6 cannot be treated as having lapsed even if it is assumed that there was failure on the part of the Special Land Acquisition Officer to make award within two years from the date of publication of declaration. Therefore, on this ground alone, the petition is liable to be rejected. However, as other contentions have been urged, we think it proper to deal with them while disposing of this petition.

11. From the facts which have been mentioned in the introductory part of the judgment, it is evident that Special Civil Application No.2774 of 1988 was filed by several persons. Admittedly, they were owners of lands bearing Survey Nos.881,896,883, 884,886,858, 857,809, 860, 861, 862, 863,866, 872, 873, 874, 877 and 878, which were also notified in declaration made under Section 6 of the Act. It may be mentioned that the lands bearing Survey Nos. 879 and 897 belonging to the petitioner were also notified in the said declaration which was issued

under Section 6 of the Act. In Special Civil Application No.2774 of 1988, ad-interim injunction was granted by the Court on June 3, 1988 restraining the respondents from taking possession of the lands of the petitioners of said petition till June 22, 1988. Thereafter, direction was given by the Court to file separate petitions and interim relief granted was continued till October 5, 1993. All the petitions were dismissed by judgment dated August 10, 1994 but the interim relief granted earlier was continued by the Court upto October 10, 1994 to enable the petitioners of those petitions to approach the higher forum. Thereafter, Special Leave Petitions were moved by the petitioners of those petitioners and Special Leave Petitions were dismissed by the Supreme Court on November 21, 1994. Under the circumstances, the question which arises for consideration is whether the period during which the interim injunction obtained by some of the land owners in Special Civil Application No.12629 of 1993 and other cognate matters, restraining the respondents from taking possession of the lands covered by declaration made under Section 6 of the Act which was published on May 12, 1988, should be excluded in computing the period of two years referred to in Section 11A of the Act. It is clear from the provisions of Section 11A that the Collector is required to make an award under Section 11 within a period of two years from the publication of the declaration and, if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. However, Explanation to Section 11A provides for exclusion of the period during which any action or proceedings to be taken in pursuance of the said declaration is stayed by an order of a Court. The main provision of Section 11-A provides that the Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if the Legislature wanted to confine the exclusion of only that period during which the passing of the award was stayed, nothing prevented it from doing so. However, instead of excluding the period during which the passing of award was stayed, the Legislature has provided for exclusion of the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of the Court. The expression "any action or proceeding to be taken in pursuance of the said declaration" is of much wider import. All actions and proceedings required to be taken not only under Section 7 to 10, but also those required to be taken for the passing of the award under Section 11 and taking of possession under Sections 16 and 17 of the Act are covered by the Explanation to Section 11-A. If any of those actions or proceedings are stayed,

the period during which such stay is in operation, is required to be excluded under the Explanation for computing period of two years within which the award is to be made. The actions or proceedings are not confined to actions or proceedings to be taken after making of the declaration under Section 6 and before the passing of the award under Section 11. Making of the award under Section 11 and taking of the possession under Section 16 or Section 17 are actions or proceedings in pursuance of the declaration under Section 6. Possession taken either under Section 16 or under Section 17 is in pursuance of the declaration under Section 6. Therefore, interim relief granted by High Court restraining the Land Acquisition Officer from taking possession of the lands of some persons would amount to staying of action or proceeding as contemplated by Explanation to Section 11-A and the period during which the interim relief was in force, will have to be excluded for the purpose of computing the period of two years for passing award under Section 11. The expression 'any action or proceedings to be taken in pursuance of the said declaration' has been interpreted by the Supreme Court in the case of Y.N. Nendoliya (supra) to mean that the period of injunction obtained by the land holders from the High Court restraining the land acquisition authorities from taking possession of the land has to be excluded in computing the period of two years referred to in Section 11A by operation of Explanation thereof. In the said case, the petitioner was the occupant of lands comprising Survey Nos.864 and 687 respectively of village Samalpati, Taluka Patan, in Mehsana District. The lands were sought to be acquired by the State Government for the purpose of North Gujarat University Campus. It was noticed that declaration under Section 6 of the Act was issued on May 12, 1988 and it was challenged earlier by filing Special Civil Application No.4342 of 1988 in the High Court. In that petition, on a prayer for interim relief made by the appellant, the High Court had granted only a limited interim relief by restraining the respondent No.1 from taking possession of the said land of the appellant pending admission of the petition. Interim relief granted was continued for a long time. Meanwhile, the Land Acquisition Officer had issued notice under Section 9(1) of the Act and proceeded to determine the compensation after hearing the objections. Before the Land Acquisition Officer, objection was raised that, as two years had lapsed after publication of declaration made under Section 6 of the Act, the Special Land Acquisition Officer had no authority to make award. That contention was rejected by the Special Land Acquisition Officer. Thereupon, the said decision was challenged by

filing Special Civil Application No.7685 of 1990. The challenge was repelled by the High Court relying upon the decision of the earlier Division Bench Judgement wherein it was held that Section 11A of the Act enjoins exclusion of the entire period during which any action or proceedings to be taken pursuant to declaration under Section 6 of the Act is stayed by an order of the competent court. Correctness of later decision was challenged before the Supreme Court. On interpretation of Section 11A of the Act, the Supreme Court has held that the period of injunction obtained by the land holders from the High Court restraining the land acquisition authorities from taking possession of the land has to be excluded in computing the period of two years referred to Section 11A by operation of Explanation thereof. Again, in the case of L.N.Venkatesa (Supra), the Supreme Court has held that lapse of acquisition proceedings under Section 11A of the Act does not occur even if stay is only against dispossession and for application of Explanation to Section 11A of the Act, the stay need not be against passing of award. In view of the authoritative pronouncement of the Supreme Court on the subject, it will have to be held that the period during which the injunction or ad-interim injunction was granted by the Court in Special Civil Application No.12629 of 1993 and other cognate matters, restraining the authorities from taking possession, stands excluded while computing the period mentioned in Section 11A of the Act and it cannot be successfully argued that, as there was no order restraining the authorities from making award, ad-interim injunction restraining the authorities from taking possession would not entitle them to wait for making the award till the said injunction was vacated. The next question which falls for consideration of the Court is whether the stay as to possession obtained by some of the persons would equally be extendible to the case of the petitioner who had not obtained any such order. In the case of Abhey Ram (supra), notification under Section 4(1) of the Act was published on November 5, 1980 acquiring a large extent of land situated in several villages including Khirkee village. The land in Khirkee village admeasured 1011 bighas of which the appellants were in possession of 25 bighas. Declaration under Section 6 was published on June 7, 1985. Several writ petitions were filed in the High Court challenging the said declaration. The primary contention was that the declaration having been published after three years, was barred by law. Similar to the appellants, several other persons had also approached the High Court challenging the declaration. The validity of notification issued under Section 4(1) as well as

declaration made under Section 6 of the Act was upheld by the Full Bench of the High Court in another case on the ground that some of the land owners whose land was covered under the common notification under Section 4(1) had already approached the High Court and obtained stay of further proceedings including publication of declaration under Section 6, and as a consequence the period during which, the stay obtained continued stood excluded by operation of Explanation II to Section (1) of the Act. In view of the Full Bench judgment, the petition filed challenging declaration under Section 6 of the Act was dismissed. While disposing of Special Leave Petition, the Supreme Court has held, in paragraph 9 of the reported judgment, as under:

"9. Therefore, the reasons given in B.R. Gupta v. Union of India are obvious with reference to the quashing of the publication of declaration under Section 6 vis-a-vis the writ petitioners therein. The question that arises for consideration is whether the stay obtained by some of the persons who prohibited the respondents from publication of the declaration under Section 6 would equally be extendible to the cases relating to the appellant. We proceed on the premise that the appellants had not obtained any stay of the publication of the declaration but since the High Court in some of the cases has, in fact, prohibited them as extracted hereinbefore, from publication of the declaration, necessarily, when the Court has not restricted the declaration in the impugned orders in support of the petitioners therein, the officers had to hold back their hands till the matters were disposed of. In fact, this Court has given extended meaning to the orders of stay or proceeding in various cases, namely, Yusufbhai Noormohmed Nendolia v. State of Gujarat, Hasraj H. Jain vs. State of Maharashtra, Sangappa Gurulingappa Sajjan v. State of Karnataka, Gandhi Grah Nirman Sahkari Samiti Ltd. vs. State of Rajasthan, G.Narayanaswamy Reddy v. Govt. of Karnataka and Roshnara Begum v. Union of India. The words 'stay of the action or proceeding' have been widely interpreted by this Court to mean that any type of the orders passed by this Court would be an inhibitive action on the part of the authorities to proceed further. When the action of conducting an enquiry under Section 5-A was put in issue and the declaration under Section 6 was questioned, necessarily unless the Court holds that enquiry under Section 5-A was properly conducted and the declaration published under Section 6 was valid, it would not be open to the officers to proceed further into the matter. As a consequence, the stay granted in respect of some would be

applicable to others also who had not obtained stay in that behalf. We are not concerned with the correctness of the earlier direction with regard to Section 5-A enquiry and consideration of objections as it was not challenged by the respondent Union. We express no opinion on its correctness, though it is open to doubt."

12. In view of the principles enunciated by the Supreme Court, it is evident that the stay obtained by some of the persons who prohibited the respondents from taking possession would equally be extendible to the case relating to the petitioner because it would not have been open to the officers to proceed further with the matter in respect of lands of petitioner only. While laying down the abovereferred to proposition of law, the Supreme Court has proceeded on premise that the appellant in that case had not obtained any stay of publication of declaration. The expression "the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4 sub-section (1) is stayed" appearing in Explanation-I to Section 6 is almost similar to the expression "the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed". The submission that the decision of the Supreme Court in the case of Abhey Ram (supra) interprets Sections 5(A) and 6 of the Act and, therefore, the same should not be made applicable while interpreting Section 11A of the Act, cannot be accepted. The Supreme Court, as a matter of principle, has laid down that the stay obtained by some of the claimants who prohibited the authorities from taking action or proceeding under the Act would equally be extendible to others who had not obtained stay in that behalf and therefore the decision rendered by the Supreme Court in the case of Abhey Ram (supra) cannot be brushed aside on the ground that the Supreme Court was concerned with the interpretation of Sections 5A(2) and 6 of the Act and not with interpretation of Section 11A of the Act. The reason as to why stay of possession obtained by some of the persons would equally be extendible to the case of those who had not obtained stay is that when the stay of dispossession or order of status quo has been obtained, the authorities are inhibited from completing the acquisition proceedings and the law requires that if the award is made, the authorities have also to deposit the amounts of compensation with the Collector. That amount would remain unutilised for years together till the judicial case is decided and stay is vacated. So, it has to be held that once such an order is made by which the constraint is put on the authorities of whatsoever nature

by an order of the Court, the period during which the stay remains in operation has to be excluded. The underlying principle for exclusion of period during which any action or proceeding is stayed by an order of the Court as envisaged by Explanation I to Section 6 is same as contemplated by Explanation to Section 11A of the Act. Therefore, decision in Abhey Ram's case would apply with all force to the facts of the present case also. In view of the principles laid down by the Supreme Court in the case of Abhey Ram (supra), the period during which others had obtained injunction restraining the respondents from taking possession will have to be excluded while computing the period of two years referred to in Section 11A of the Act in the case of the petitioner also. It is true that, in the present case, the awards were made on September 21, 1990 and May 30, 1992, i.e, before the period of expiration of interim relief. However, merely because the awards were made prior to expiry of period of injunction, it cannot be said that they are not made within the period of two years from the date of publication of declaration under Section 6 of the Act because the period of limitation would begin from the day on which the stay is vacated by the Court and not earlier. Having regard to the totality of the facts and circumstances of the case, we are of the opinion that two awards made by the Special Land Acquisition Officer and Deputy Collector, Patan, cannot be treated as having been made after the period of two years from the date of publication of declaration under Section 6 of the Act so as to entitle the petitioner to claim the reliefs mentioned in the petition. The petition, therefore, cannot be entertained and is liable to be rejected.

13 No other point is urged by the learned counsel for the petitioner in support of this petition.

14. For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no order as to costs.

(swamy)